

MASS. J4.2: C43 /2/2001

Massachusetts Child Support Guidelines**Review Process****2001**

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Depository Copy**Executive Summary****Overview**

During calendar year 2001, the review of the Massachusetts Child Support Guidelines was undertaken as required by Federal Regulation (45 CFR 302.56). The review consisted of:

- an extensive outreach to the public, court officials, state officials, lawyers and legislators which sought both oral and written comments
- an extensive data survey and analysis of Probate and Family Court cases commenced since the Guidelines were last reviewed in 1997
- consultation with experts
- review of the experience of judges who use the Guidelines daily
- review of recent data available both nationally and locally
- comparative analysis of Massachusetts orders with those of other states for similar scenarios
- testing of numerous Guideline changes to respond to the extensive commentary received and to the results of a data survey

As a result of this comprehensive process and an examination of all the issues raised, Guideline amendments have been developed. Extensive changes were not made as we are convinced that the approach which has been used since the original Guidelines were issued in May, 1987, is a sound one. The underlying principles of the Guidelines remain the same. The guiding principle has been and will continue to be the best interests of children. Guidelines are just that - guidelines, and judicial discretion remains an integral part of the child support process. It is also useful to remember that the Guidelines have statewide applicability for individuals with widely differing economic and residential situations, and are used in both paternity and divorce cases.

The Guidelines have been promulgated to give a sense of predictability to both parents on the level of child support that may be ordered by the Court. Guidelines are intended to provide a frame of reference for consistency in support orders issued by the Court. However, Guidelines are established as a rebuttable

presumption, and should circumstances warrant, judges may deviate from the prescribed formula.

Outreach

Public outreach for commentary on the adequacy of the Guidelines sought both oral and written comments. Oral testimony from 130 individuals was received at five public forums, and written comments were requested and received from over 160 interested individuals including custodial and non custodial parents, attorneys and bar associations, legal service agencies, judges and other court officials, the Department of Revenue, legislators and organizations with an interest in child support.

Using comments received, an annotated matrix was created, subdivided by each section of the Guidelines. For each section, all written commentary on that section (where a constructive comment was made) was noted. This analysis provided a starting point for reviewing those areas most frequently suggested as areas for change, and also showed the often divergent suggestions as to proposed changes

Consultation with Experts

An economist was engaged to produce a report which focused specifically on economic considerations particular to Massachusetts. The report was especially useful in light of the fact that a great deal of the commentary received from members of the public put forth the view that the Guidelines do not reflect the actual cost of raising a child. The report provided an extensive analysis of the varied measures for determining the components of the costs of raising children extrapolated to a Massachusetts economic model, a discussion of costs vs. expenditures, the expenditures on children within various age cohorts and in different family economic situations, and commentary on specific sections of the Guidelines themselves, including some perceived inequities which arise from their application.

The Chief Justice also convened a panel of ten Probate and Family Court justices from around the state to review proposed amendments to the Guidelines, and to hear any comments on their experience with the existing Guidelines.

Data Survey

An extensive data survey was undertaken to address the requirements of the federal regulation which provides that " a state must consider and analyze case data gathered through sampling or other methods, on the application of and deviations from the guidelines".

The survey provided a great deal of insight into the caseload and the economic

variables of the situations studied. The data for 2001 was compared to similar data collected in 1997 in advance of the last review process. In 2001, the average non custodial income was \$711/week; for custodial parents, it was \$449. The average actual order per week was \$163. 42% of the orders were within the Guideline range (order + or - 2%); 26% had orders higher than the range, and 33% had orders lower. Health insurance as a cost was noted in 48% of the cases, at an average cost of \$45 per week. In 65% of the cases with health insurance, the cost was paid by the non custodial parent. Day care was noted in 34% of the cases, at an average cost of \$141 per week. 20% of the custodial parents received public assistance.

Amendments

This review of the guidelines was approached with an open mind. We did not preclude reviewing any specific suggestions relating to the content of the Guidelines. We did keep in mind, however, that the Guidelines have represented sound public policy since 1987 and were developed in the best interests of children. Massachusetts is regarded as a national leader in this area, so bringing the Guidelines up to date, rather than completely overhauling them seemed most prudent.

In developing a proposal for amendments to the Guidelines to be effective in 2002, all of the commentary suggesting changes was reviewed. The report of the economist and suggested changes therein were utilized as guidance in looking at new formula considerations. Also, the results of the data survey, particularly as they relate to income levels were used. Various case scenarios taken from the data survey were used to test proposed formulas to determine whether suggested modifications would inequitably impact the welfare of children. For comparative purposes, the same scenarios were tested against the Guidelines from other similarly situated states.

-The revised Guidelines contain a new suggested minimum order of \$80 per month for obligors earning less than \$100 per week. This new figure was instituted not only because it was perceived as being unfair to apply the percentage formula to cases where the obligor was earning \$100 per week or less, but also to send a strong public policy message to parents that they must contribute to the support of their children even if their resources are limited. For most individuals of limited income, paying \$80 per month is reasonable.

-The upper income levels to which the Guidelines currently apply (\$75,000/\$100,000) are increased to \$100,000/\$135,000. The Consumer Expenditure Survey, 2001, calls the income needed to generate an abundant level of support the "social abundance standard" or 150% of median expenditures. The 2001 income corresponding to the social abundance standard in the United States is \$76,311; the standard adjusted by 25% to reflect Massachusetts'

higher income and expenditure levels, yields a figure of \$95,390 for Massachusetts. This standard is used to define the upper limit of income for the non custodial parent, adjusted for potential increases in future years when the Guidelines are not amended. A similar adjustment is made to the joint income limit.

-The formula has been designed to apply to families with three children or fewer. Our data indicated that the percentage of families having more than three children for which the Court has entered support orders is extremely small; therefore, that provision of the Guidelines remains the same. The Guidelines formula amount used to arrive at a figure for three children should be used as a minimum presumptive amount by the Court to determine whether additional amounts of child support should be ordered for families having four children or more. Language is added to require written findings to describe the circumstances of the particular case in the event that support for children in excess of three is ordered at the three child level.

-Changes to the "Age of Children" section have been made. For cases where the oldest child covered by the order is between the ages of 13 - 18, a single adjustment to the basic order shall be made. This change was based upon estimates by the Consumer Expenditure Survey Self Sufficiency Budgets and the USDA that suggest that children age 13 and older are more expensive to support than younger children. This gap has been estimated at 10% for middle-income families.

-The current basic formula is modified in response to a finding that under the current support obligation schedule, small increases in earnings can result in large increases in support payments by crossing a threshold. These small increases can cause what has been termed the "cliff effect". The basic obligation structure has been revised so that the higher percentages of the Guidelines will only apply to the additional amounts of income earned when a threshold is crossed, rather than assessing the obligation at the higher rate for the whole amount of income earned. The new formula for the basic child support obligation schedule, while containing rates similar to the rates used in prior versions of the Guidelines, avoids sudden jumps in child support payment levels as a result of small increases in income levels.

-The formula has been adjusted to increase the support obligation for low income obligors. Many commentators suggested that the minimum monthly support order contained in the existing Guidelines set in 1986 provides insufficient

resources for poor children and is not reflective of the cost of living in Massachusetts.

-The formula has also been adjusted somewhat at higher incomes to reduce basic orders. A great deal of comment suggested that the basic order for one child, in particular, is excessive as it relates to the actual cost of raising a child. While we believe that the current Guideline formula provides for the best interests of children, we have reviewed economic data and made a minor adjustment to the formula. The new basic orders recognize the resources available to support children in families of higher income and the concerns of non custodial parents.

-The custodial parent income disregard is increased to \$20,000. This is based on the Consumer Expenditure Survey, 2001, definition of "lower living standard" for one person in Massachusetts to be \$18,433, adjusted for potential increases in future years when the Guidelines are not amended.

Changes Considered But Not Made

At the public forums and in written testimony, certain comments were made which suggested changes beyond the scope of the Guidelines. Some suggested a reporting requirement to document expenditures made by custodial parents. We determined that no sound public policy suggested the need for such measures. Others suggested that support should be taxable to the payee, and a deduction for the obligor. Federal tax law governs this situation, and it is not an appropriate addition to the Guidelines. Some members of the public asked that child support be limited to the actual cost of raising children. Our inquiry has determined that there is no agreement among experts as to what that cost is. However, the guiding principles established by statute require that above and beyond survival needs, a child should be able to enjoy a higher standard of living to the extent that either parent enjoys a higher standard of living.

The issue of whether the Guidelines should be amended to take into consideration children of subsequent families (beyond the existing language) was examined. After careful consideration, it was determined that the Guidelines should not be revised to include a formula for the reduction in support for prior children based on the expense of subsequent families. We fear that such an amendment could seriously impact the standard of living of prior children who are the subjects of a pre-existing order. Already included in the Guidelines in Subsection J is language which was inserted in the 1994 amendments: "Expenses of a subsequent family may be used as a defense to a request to modify an order seeking an increase in the existing order." Nothing in the Guidelines should be construed to prevent a judge from using judicial discretion in an individual case should the circumstances warrant.

Various individuals asked that the Guidelines be changed to eliminate the



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applicability of the Guidelines to children over the age of 18. We decline to address the issue in the Guidelines as it is governed by state law. General Laws, Chapter 208 §28, Chapter 209 § 37 and Chapter 209C §9(a), provide that the Court may make appropriate orders for maintenance support and education of any child who has attained the age of 18 but who has not attained the age of 21 and who is domiciled in the home of a parent and is principally dependent on the parent for support. The Court may also make orders for support and maintenance for children who have attained the age of 21 but who have not attained the age of 23 if the child is domiciled in the home of the parent and is principally dependent upon the parent for maintenance due to enrollment in an educational program, excluding costs beyond an undergraduate degree.

Child Support Guidelines

Effective February 15, 2002

(Also available in PDF)

Chart for a Basic Child Support Order

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